

United States  
Rail Services, Inc. ✓



633 Battery Street  
San Francisco, California 94111  
(415) 445-7690

RECORDATION NO. 11814-A Filed 1425

JAN 24 1985 -2:5 PM

INTERSTATE COMMERCE COMMISSION

January 3, 1985

Mr. James H. Bayne  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

5-024A090

No. 5-024A090

Date JAN 24 1985

Fee \$ 10.00

ICC OM Washington, D.C.

Dear Secretary:

I have enclosed an original and one counterpart of the document described below, to be recorded pursuant to section 11303 of title 49 of the U. S. Code.

This document is a "Transfer of Ownership" dated December 21, 1984 by Diane H. Smith, as personal representative of the Estate of James H. Smith, Jr., deceased, as Assignor to Security Pacific National Bank, as Trustee all property contained in the Railroad Car Management Agreement, dated March 18, 1979 and Railroad Car Management Agreement, dated July 19th, 1978 (copies attached).

The names and addresses of the parties to the documents are as follows:

United States Rail Services, Inc., Managing Agent  
P. O. Box 3985  
San Francisco, Ca 94119

Diane H. Smith, Personal Representative  
Estate of James H. Smith  
c/o Ernst & Whitney  
1205 Prospect St., Ste 365  
La Jolla, CA 92037

A description of the equipment covered by the documents is as follows:

Five (5) 100 Ton 4650 Cu. Ft. Capacity, covered hopper cars with roller bearings numbered RUSX 4906 through 4910, and

Five (5) 100 Ton 4650 Cu. Ft. Capacity, covered  
hopper cars with roller bearings numbered RUSX  
51 through 55.

A fee of \$10.00 is enclosed. Please return the original not  
needed by the Commission for recordation purposes to the under-  
signed.

Sincerely,

A handwritten signature in cursive script, reading "Carol J. Kane".

Carol J. Kane  
Assistant Secretary

Enclosure

1/24/85

**Interstate Commerce Commission**  
Washington, D.C. 20423

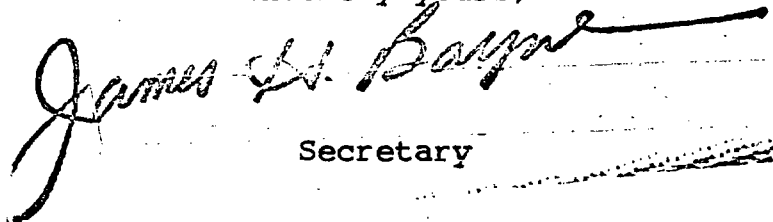
**OFFICE OF THE SECRETARY**

Carol J. Kane  
Assist. Sec.  
U.S. Rail Services, Inc.  
633 Battery Street  
San Francisco, Calif. 94111

Dear Ms. Kane:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/24/85 at 2:45pm and assigned re-recording number(s) .11814-A

Sincerely yours,

  
Secretary

Enclosure(s)

JAN 24 1985 - 2 PM

INTERSTATE COMMERCE COMMISSION  
TRANSFER OF OWNERSHIP

DIANE H. SMITH, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES H. SMITH, JR., DECEASED, as Assignor, hereby sells, transfers and assigns to SECURITY PACIFIC NATIONAL BANK, AS TRUSTEE OF THE JAMES H. SMITH TRUST NO. 08-5-07729-0-LD, whose address is P. O. Box 528, San Diego, CA 92112, as Assignee, the following personal property:

1. The following described railroad cars being a part of Car Owner's Pool No. 4 with United States Rail Services, Inc.

<u>Car Name</u>	<u>Car Number</u>
RUSX	51
RUSX	52
RUSX	53
RUSX	54
RUSX	55

2. The following described railroad cars being a part of Car Owner's Pool No. 5 with United States Rail Services, Inc.

<u>Car Name</u>	<u>Car Number</u>
RUSX	4906
RUSX	4907
RUSX	4908
RUSX	4909
RUSX	4910

3. All of Assignor's right, title and interest in and to that certain Railroad Car Management Agreement dated April 14, 1981 between J. H. Smith and United States Rail Services, Inc. with respect to the above-described railroad cars.

TO HAVE AND TO HOLD unto said Assignee and its successors and assigns FOREVER.

This Bill of Sale shall be effective for all purposes as of the close of business on December 31, 1984.

Dated: December 21, 1984.

Diane H. Smith  
Diane H. Smith  
Personal Representative

STATE OF COLORADO )  
 )  
COUNTY OF PITKIN ) ss.

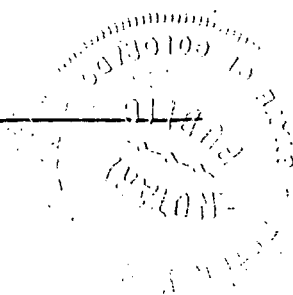
The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of December, 1984 by Diane H. Smith, as Personal Representative of the Estate of James H. Smith, Jr., Deceased.

WITNESS my hand and official seal.

My commission expires: 9-11-87.

*Peter Dan Dorndorf*

Notary Public



JAN 24 1985 - 2 11 PM

DISTRICT COURT, COUNTY OF PITKIN, STATE OF COLORADO  
 PROBATE NO. 82PR33

INTERSTATE COMMERCE COMMISSION  
 FILED IN DISTRICT COURT  
 PITKIN COUNTY  
 ASPEN, COLORADO

JAN 14 1985

LETTERS

CAROLYN J. MANOWN, Clerk

IN THE MATTER OF THE ESTATE OF JAMES H. SMITH, JR., DECEASED

THE PEOPLE OF THE STATE OF COLORADO

To All to Whom These Presents Shall Come--GREETINGS:

WHEREAS, on the 13th day of January, 1983, Diane H. Smith was duly appointed as Personal Representative of the Estate of the above-named decedent by this Court, with all the authority pertaining thereto;

NOW, THEREFORE, these Letters Testamentary are issued as evidence of such appointment or qualification and authority.

Witness, my signature and the seal of this Court, this  
13 day of January, 1983.

*Carolyn J. Manown*  
 CLERK OF COURT

Certified to be a true and complete  
 copy of original on file in the District  
 Court of Pitkin County, Colorado

Date February 22, 1983  
Wann C. Dierker  
 Clerk

RECEIVED  
 MAY 31 1983  
 U.S. RAIL SERVICE

THE SECURITY REPRESENTED BY ONE OR MORE RAILROAD TANK CARS AS DESCRIBED IN THE PRIVATE OFFERING MEMORANDUM DATED APRIL 14, 1978, TOGETHER WITH THIS MANAGEMENT AGREEMENT, HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. THIS SECURITY MAY NOT BE SOLD OR OFFERED FOR SALE UNLESS REGISTERED PURSUANT TO SUCH ACT OR UNLESS AN EXEMPTION FROM SUCH REGISTRATION IS AVAILABLE. RECORDATION NO. 11814 1425

FOR CALIFORNIA RESIDENTS ONLY:

MAY 20 1980 -9 45 AM

IT IS UNLAWFUL TO CONSUMMATE A SALE OR TRANSFER OF THIS SECURITY, OR ANY INTEREST THEREIN, OR TO RECEIVE ANY CONSIDERATION THEREFOR, WITHOUT THE PRIOR WRITTEN CONSENT OF THE COMMISSIONER OF CORPORATIONS OF THE STATE OF CALIFORNIA, EXCEPT AS PERMITTED IN THE COMMISSIONER'S RULES.

### RAILROAD CAR MANAGEMENT AGREEMENT

THIS AGREEMENT, made this *19th day of July 1978*, by and between United States Rail Services, Inc., a California corporation (hereinafter called "Managing Agent") and *J. H. Smith, Jr.* of *Aspen*, State of *Colorado* (hereinafter called "Owner").

### WITNESSETH:

WHEREAS, Managing Agent has offered and sold 100-ton 20,000-gallon capacity railroad tank cars, Class DOT111A100W1 ("Cars") under a Private Offering Memorandum dated April 14, 1978, which Cars will be operated in a pool ("Pool No. 4"); and

WHEREAS, Owner holds title or will hold title to *5* Cars, which Owner desires Managing Agent to manage and operate as agent for Owner;

NOW THEREFORE, the parties hereby agree as follows:

1. Employment as Manager. Owner hereby employs Managing Agent to manage the operation of Owner's Cars in accordance with the terms and conditions hereinafter set forth and Managing Agent agrees to accept such employment. The relationship between Owner and Managing Agent is one of principal and agent and not one of partnership or joint venture.

2. Managing Agent's Duties. Managing Agent shall do the following (which Owner agrees shall be done by Managing Agent):

(a) Accept delivery of Owner's Cars and operate and account for them in Pool No. 4.

EXHIBIT B

(b) Secure the assignment of Association of American Railroad's reporting marks for Owner's Cars, place such marks upon the Cars and register such Cars in such tariffs as required for their operation in railroad service, and paint such Cars any appropriate color and place on such Cars such markings or legends as it deems required or appropriate;

(c) Acting on behalf of Owner, execute in its name, if it deems it advisable (1) all required Association of American Railroads, Interstate Commerce Commission, local Public Utility Commission and all other governmental or industry agreements it deems necessary, appropriate or required in order to operate Owner's Cars in railroad service under this Agreement; and (2) all ad valorem and other tax filings and pay any such taxes with respect to such Cars;

(d) Use its best efforts to lease Owner's Cars to shippers or other users of railroad cars. Without the prior written consent of Owner, such leases shall be (a) on terms and conditions which are customary in the industry, and (b) for a lease term (taking into account options to renew) not to exceed 5 years and 11 months;

(e) Pay to Owner within 90 days after the end of each Calendar Quarter the Pro Rata Net Operating Profit of Owner's Cars as calculated under the provisions of Paragraph 5 hereof;

(f) Perform all managerial and administrative functions necessary for the operation and leasing of Owner's Cars, including (but not limited to) collecting of all Gross Revenue, arranging for the maintenance and repair of such Cars for the account of Pool No. 4, and keeping adequate records of the operation of such Cars;

(g) Submit unaudited quarterly reports and audited annual reports including such information as is reasonably necessary to enable Owner to complete his tax returns. The annual report will be furnished within 75 days after the end of each calendar year. If necessary, prepare Federal and State of California partnership tax returns for each calendar year and shall timely file such returns;

(h) Notwithstanding the provision for quarterly payment of Net Operating Profit, Managing Agent may, if in its judgment it deems it appropriate, at any time, calculate Net Operating Profit and Incentive Management Fee, pay any unpaid Incentive Management Fee and distribute any undistributed Net Operating Profit with respect to any Car; and

(i) Not assign its rights hereunder without the consent of Owner.



In performing its managerial and administrative functions hereunder, Managing Agent shall not knowingly discriminate against or in favor of Owner's Cars in seeking leases.

3. Owner's Obligations. Owner shall:

(a) Make the initial delivery of his Cars to Managing Agent at the point or points designated by Managing Agent;

(b) Allow Managing Agent to act in his name, for and on behalf of Owner, and to do all things and incur any and all obligations it deems appropriate or necessary, all at the discretion of Managing Agent, in order to operate Owner's Cars under this Agreement;

(c) Reimburse Managing Agent promptly upon demand for (1) all Pro Rata Operating Loss Allocated to Owner's Cars if in any Calendar Quarter Operating Expenses exceed the Gross Revenues for that quarter and (2) the cost of any improvements or modifications to any of such Cars required by the Association of American Railroads or other official authority, in excess of a total expenditure of two hundred dollars (\$200) in any calendar year, provided however, that no modification or improvement costing in excess of that amount will be made on any Car of Owner without Owner's permission, except that such permission will be deemed to have been granted if Owner fails to advise Managing Agent to the contrary in writing within 30 days after notice to Owner by the Managing Agent of such required modification or improvement and its estimated cost. Managing Agent may apply against payment of these charges any Net Operating Profit due Owner;

(d) Bear all loss and damage to Owner's Cars and all claims, damages, expenses and liabilities (including attorneys' fees) arising from the operation, possession, control or use of such Cars, and indemnify and hold the Managing Agent harmless from and against any and all claims, damages, expenses or liabilities (including attorneys' fees) incurred by, or asserted against Managing Agent as a result of its (or any other party's) operation, possession, control or use of such Cars, other than for the Managing Agent's errors in judgment or other acts or omissions not undertaken in good faith and amounting to fraud, bad faith or negligence, including, but not limited to, any and all loss or damage to lading, and injury or damage to persons or property;

(e) Provide policies of insurance, including (but not limited to) all risks, physical damage and public liability insurance, in kinds and amount required by Managing Agent, naming Owner and Managing Agent as beneficiaries and insuring both against liabilities deemed by Managing Agent to be required; and

(f) Not assign or otherwise transfer his rights hereunder without the consent of Managing Agent.

4. Term.

(a) Duration. The term of this Agreement as to each of Owner's Cars will commence upon the respective dates of delivery of each of them pursuant to Paragraph 3(a), and will remain in full force and effect until terminated upon the earliest of the following to occur:

(1) 90 days after the Owner gives the Managing Agent notice of its intention to terminate; or

(2) upon the total destruction of any such Car; or

(3) at the Managing Agent's option, upon breach by Owner of any of the covenants which it is required to perform; or

(4) at the Managing Agent's option, if Owner fails to permit modifications or improvements required as provided in paragraph 3(c) of this Agreement; or

(5) February 28, 1984.

(b) Termination. Upon termination of this Agreement Managing Agent shall

(1) Make a complete and final settlement of all Net Operating Profit due Owner from operation of his Cars, at the expiration of 12 months from the actual date of termination. In calculating the final settlement, Managing Agent shall deduct from the Net Operating Profit due Owner on the settlement date the following expenses incurred prior to termination with respect to his Cars, which expenses may be estimated: adjustments for refunds, railroad tariff charges, repairs, taxes and all other expenses. Each such charge shall be calculated as of the date of the actual release of such Cars from this Agreement. Managing Agent shall have the option of making estimated quarterly payment of Net Operating Profit to Owner prior to said final settlement date. If the calculation results in an Operating Loss, Owner shall pay such Operating Loss to Managing Agent upon billing therefor.

(2) Except as to any Car of Owner which has been totally destroyed, arrange for the return of the Owner's Cars to Owner, at Owner's expense. If there are existing leases affecting any of such Cars, Managing Agent shall provide Owner with a copy of such leases, shall notify lessees to deal directly with Owner, and thereafter Managing Agent shall have no further rights or obligations with respect to such Cars. However, Owner shall, at Managing Agent's option and direction, assign Owner's rights in such leases to Managing Agent. Owner's Cars shall be returned in

condition acceptable in railroad interchange service, but otherwise in their then existing condition, except in the event that the Agreement is terminated by Managing Agent due to Owner's instructions that modifications or improvements required by the Association of American Railroads are not to be made to his Car, such improvements or modifications will not have been made.

5. Determination of Profit or Loss.

(a) Definitions. The following terms shall, for the purposes of this Agreement, have the meanings set forth in this subparagraph:

(1) Calendar Quarter or Quarterly shall mean the calendar quarter used by Company for accounting to Owner under this Agreement.

(2) Car Day shall mean the service time of one Car for one day.

(3) Managing Agent shall mean, in addition to United States Rail Services, Inc., all agents and employees thereof.

(4) Gross Revenue shall mean all lease rents, railroad mileage allowances received as lease rents and other monies derived from the use of all Cars in Pool No. 4 and actually collected by Managing Agent. Funds paid out to adjust lease rents or other revenue moneys shall be deducted from Gross Revenue. Gross Revenue shall be allocated to the Calendar Quarter in which earned, but if not collected within nine months after the end of the Calendar Quarter in which earned shall be included in Gross Revenue for the Calendar Quarter in which collected.

(5) Incentive Management Fee shall be 20% of Operating Profit.

(6) Net Operating Profit shall mean Operating Profit less the Incentive Management Fee.

(7) Operating Expenses shall mean all expenses of all Cars in Pool No. 4 actually paid by Managing Agent during a Calendar Quarter, though incurred prior to such Calendar Quarter, including but not limited to maintenance and repairs, cleaning, taxes of any kind (except taxes on net income), fees and railroad tariff charges, but excluding insurance, sales, general and administrative expenses and charges for improvements or modifications to any car beyond the maximum amount provided for in clause 3(c)(2) hereof. Proceeds received in settlement from railroads and others

or from insurance for damage to any Car in Pool No. 4 shall be credited to Operating Expenses, except a settlement received for a Car which is totally destroyed, which shall be paid to its Owner.

(8) Operating Profit or Operating Loss shall mean the result of subtracting Operating Expenses from Gross Revenue.

(9) Pro Rata shall mean an allocation based on the numerical proportion that the service time (expressed in Car Days) of an individual Car or group of Cars bears to the total service time of all Cars in Pool No. 4 during a Calendar Quarter or other accounting period. Service time of a Car in Pool No. 4 begins on the date it first earns lease revenue and continues until termination of this Agreement.

(b) Determination. Operating Profit and the Net Operating Profit or the Operating Loss of Pool No. 4 shall be determined by the Company for each Calendar Quarter, as follows:

(1) The Operating Expenses paid for all Cars in Pool No. 4 shall be deducted from the Gross Revenue collected for use of all such cars to determine the Operating Profit.

(2) The Managing Agent shall deduct from Operating Profit as its compensation the Incentive Management Fee. The remainder shall be Net Operating Profit for the Quarter.

The total Net Operating Profit shall be allocated Pro Rata to each of the Cars and paid to each Owner as provided in Paragraph 2(e) and 5(a)(9).

6. Breach. In the event of a breach of this Agreement, the breaching party shall have 7 days after written notice thereof to cure said breach. The nonbreaching party shall have all rights afforded by law or equity against the breaching party in the event said breach is not cured within said 7 day period. All rights and remedies herein given to a party shall be cumulative. In the event of a breach of this Agreement, or any condition thereof, by Owner, Owner agrees to pay all expenses incurred by Managing Agent arising from said breach, including reasonable attorneys' fees incurred by Managing Agent in enforcing its rights hereunder.

7. Delay and Loss. The obligations of Managing Agent hereunder shall be subject to all delays and contingencies beyond the control of Managing Agent. Managing Agent shall not be liable for any loss of, or damage to Owner's Cars.

8. Inspection. The Owner or his authorized representative shall be entitled to inspect the books and records of the Managing Agent relating to Pool No. 4 during normal business hours and upon reasonable notice.

9. Miscellaneous. This Agreement has been executed by the Managing Agent in San Francisco, California. If any provision of this Agreement should be invalid, the remaining provisions hereof shall continue to be fully effective, unless a complete failure of consideration occurs thereby, or it would be unfair to thereafter continue this Agreement. Time is of the essence of this Agreement, and to each and every condition and term thereof. A failure by either party to exercise any right set forth in this Agreement shall not constitute a waiver of that right. Owner acknowledges that there are no warranties or representations, express or implied by Managing Agent as to the amount of Net Operating Profit, if any, to be derived under this Agreement. The Agreement is the complete agreement between the parties and supersedes all prior negotiations and agreements and documents as requested by Managing Agent in connection with management of the Cars. The Agreement shall be binding upon and, except as otherwise specifically provided hereby, shall inure to the benefit of the successors and heirs of the parties.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

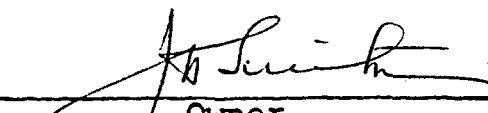
11. Notices. Notices hereunder shall be deemed given when placed in a sealed envelope, properly addressed to the party to whom such notice is being given, at the addresses shown below their respective signatures at the end of this Agreement, and deposited in the United States mail, as a Certified or Registered Letter, return receipt requested, with all required postage thereon fully prepaid. Either party may, by written notice in accordance with the provisions of this paragraph 11, designate a new address to which all future notices shall be addressed.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

UNITED STATES RAIL SERVICES, INC.

By 

Address:  
633 Battery Street  
San Francisco, California 94111

  
Owner  
Address: Box 58  
Aspen Colo  
81611

